

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE NEW ENGLAND COMPOUNDING  
PHARMACY, INC. PRODUCTS  
LIABILITY LITIGATION

MDL No. 2419  
Dkt. No. 1:13-md-2419 (RWZ)

THIS DOCUMENT RELATES TO:

All Actions

**THE PLAINTIFFS' STEERING COMMITTEE'S PROPOSED AGENDA  
FOR THE JUNE 22, 2016 DISCOVERY HEARING AND STATUS CONFERENCE**

The Plaintiffs' Steering Committee proposes the following agenda for the June 22, 2016 discovery hearing (before Judge Boal at 11:30 a.m.) and status conference (before both Judge Zobel and Judge Boal at 2:00 p.m.). The defendants, the FDA, and the U.S. Attorney's office have been given an opportunity to comment on this proposed agenda.

**A. Motions Set for Oral Argument During the Discovery Hearing<sup>1</sup>**

1. PSC and Cumberland Medical Joint Motion for Stipulated Qualified Protective Order [Dkt. 2841]
  - a. PSC and Cumberland Medical Second Corrected Joint Stipulated Qualified Protective Order [Dkt. 2848]
  - b. Specialty Surgery Stipulation for Extension of Time to Respond to May 23 [Dkt. 2865]
2. Specialty Surgery Center, PLLC, Kenneth R. Lister, M.D. and Kenneth Lister, M.D., P.C.'s Motion for Protective Order Pursuant to Federal Rule of Civil Procedure 26(c) [Dkt. 2906]
  - a. PSC's Response in Opposition to Motion for Protective Order Pursuant to Federal Rule of Civil Procedure 26(c) [Dkt. 2920]
  - b. Specialty Surgery Center, PLLC, Kenneth R. Lister, M.D. and Kenneth Lister, M.D., P.C.'s reply [Dkt. 2906]

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<sup>1</sup> Electronic Order – Text Only [Dkt. 2922].

**B. Motions for which Oral Argument is Requested During the Status Conference**

None.

**C. Report to the Court**

3. Status of bankruptcy
4. Status of insurance declaratory judgment actions
  - a. *State Farm Fire and Casualty Company v. Specialty Surgery Center PLLC, et al.*, 2:15-cv-00026 (M.D. Tenn.)
5. Status of discovery

None.

  - a. Court rulings update:
    - i. Order Granting Emory Clinic [Dkt. 2777] and Vanderbilt's Motions to Quash Premier's Notices of Depositions by Written Questions [Dkt. 2901]
6. Status of litigation track
  - a. Court rulings update:
    - i. Order from Zobel Staying All Pending St. Thomas Related Filings [Dkt. 2898]
    - ii. Order from Zobel re Corrected Order to Show Cause Concerning Remand and Transfer [Dkt. 2928]
  - b. Responses to show cause order regarding remand and transfer [Dkt. 2928]<sup>2</sup>
    - i. Premier
    - ii. Box Hill
    - iii. Specialty Surgery
    - iv. Ocean State
    - v. Other entities
    - vi. *Gilliam* Request for Extension, 15-cv-11367-RWZ (forthcoming)
  - c. Update on Specialty Surgery Center Cases and Order Amending Case Management Deadlines [Dkt. 2652]
    - i. Specialty Surgery Defendants' Motion for Remand or Transfer (forthcoming)

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<sup>2</sup> The PSC will provide a summary of responses filed during the status conference. The PSC understands that individual counsel for some parties may wish to be heard regarding their positions.

ii. Specialty Surgery Defendants' Motion for Summary Judgment on the Plaintiffs' Claims for Strict Product Liability [Dkt. 2882]

1. Specialty Surgery Center Defendants' Proposed Order [Dkt. 2930]

7. Schedule for future status conferences

a. August/September 2016

**D. Fully Briefed Motions**

*Dispositive Motions*

8. Abdul Barakat, M.D. and Ocean State Pain Management, Inc. Motion to Dismiss Product Liability Claims in *Simas v. Abdul R. Barakat, M.D. et. al* [Dkt. 2390]<sup>3</sup>

a. Plaintiff's Opposition [Dkt. 2591, 2592]

b. Abdul Barakat, M.D. and Ocean State Pain Management, Inc. Reply [Dkt. 2723]

c. Plaintiff's Sur-Reply [Dkt. 2765]

**E. Briefing in Progress**

*Discovery-Related Motions*

None.

*Other Motions*

9. Massachusetts Board of Registration in Pharmacy's Motion to Withdraw as Attorney by Commonwealth of Massachusetts [Dkt. 2915] (unopposed)

*Dispositive Motions*

None.

**F. Motions Stayed as a Result of Dkt. 2898**

10. Saint Thomas Entities' Motion for Partial Summary Judgment on Putative Claims for Actual Agency and Direct Liability [Dkts. 2743, 2744, 2745]

a. PSC Opposition [Dkts. 2818, 2819, 2820]

b. Saint Thomas Entities' Reply [Dkt. 2854]

11. Tennessee Clinic Defendants' Motion to Compel David Kessler Deposition Completion and Mandate for Direct Responses [Dkts. 2763, 2766] (oral argument waived)<sup>4</sup>

a. Tennessee Clinic Defendants' Notice of Manual Filing of Exhibits 1-4 [Dkt. 2773]

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<sup>3</sup> The parties no longer request oral argument this month.

<sup>4</sup> See Transcript of April 14, 2016 Status Conference, 22:17-23:10.

- b. PSC Opposition [Dkt. 2825]
  - c. Tennessee Clinic Defendants' Amended Reply [Dkt. 2838]
- 12. Nashville Healthcare Defendants' Motion to Strike Matthew Lee as Case-Specific Expert [Dkts. 2769, 2770]
  - a. Plaintiffs' Consolidated Opposition [Dkt. 2799]
- 13. PSC Motion to Quash and for Protective Order Relating to David Kessler [Dkts. 2815, 2816]
  - a. STOPNC Response [Dkt. 2837]
- 14. PSC Motion to Strike Supplemental Mixon Report [Dkts. 2829, 2830] (oral argument waived)
  - a. STOPNC Defendants' Opposition [Dkt. 2845]
  - b. PSC Reply [Dkt. 2863]
  - c. Order [Dkt. 2891]
  - d. Joint Status Report Regarding Motions to Strike Matthew Lee as Case-Specific Expert and Bill Mixon's Supplemental Report by Vaughan A. Allen, M.D., John Culclasure, Howell Allen Clinic, A Professional Corporation, Saint Thomas Outpatient Neurosurgical Center, LLC, Debra Schamberg [Dkt. 2900]
- 15. STOPNC Defendants' Notice of Filing Motion to Dismiss for Noncompliance with Tenn. Code Ann. § 29-26-122 [Dkt. 2874] (ostensibly applies to Bellwether cases)
- 16. PSC Motion for Leave to File Motion for Partial Summary Judgment on Comparative Fault Defenses Regarding Governmental Entities [Dkt. 2862]
  - a. STOPNC Defendants' Response [Dkt. 2868]
  - b. Saint Thomas Entities' Response [Dkt. 2873]
- 17. STOPNC Defendants' Motion for Leave to File Motions for Summary Judgment [Dkt. 2867]
  - a. Saint Thomas Entities' Notice of Joinder [Dkt. 2880]
- 18. STOPNC Defendants' Motion to Dismiss for Noncompliance with Tenn. Code Ann. § 29-26-121 [Dkts. 2869, 2870]
- 19. STOPNC Defendants' Motion to Dismiss for Noncompliance with Tenn. Code Ann. § 29-26-122 [Dkts. 2871, 2872]
- 20. Saint Thomas Entities' Motion for Leave to File Motion for Partial Summary Judgment on Claims for Apparent Agency [Dkt. 2878]
- 21. Saint Thomas Entities' Motion for Leave to File Motion to Dismiss or, in the Alternative, Motion for Summary Judgment [Dkt. 2879]

- a. Stipulation/Correction re Motion for Leave to File Motion to Dismiss or, in the Alternative, Motion for Summary Judgment [Dkt. 2924]
- 22. PSC's Motion for Partial Summary Judgment [Dkt. 2887]
- 23. PSC's Motion for Extension of Time to June 10, 2016 to Complete Discovery Deadlines Set in Dkt. 2827 [2902]
- 24. Notice of Appeal of Magistrate Judge's Decision by Saint Thomas Entities [Dkt. 2908]
- 25. Motion for Joinder in the Saint Thomas Entities Objections to Order Denying Motion to Dissolve Protective Orders and Lift Stays and Request for Ruling on Omnibus Motion at Doc. 2908 [Dkt. 2911]

Dated: June 21, 2016

Respectfully submitted,

**/s/ Kristen A. Johnson**

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**CERTIFICATE OF SERVICE**

I, Kristen A. Johnson, hereby certify that I caused a copy of the above Proposed Agenda to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Dated: June 21, 2016

**/s/ Kristen A. Johnson**

Kristen A. Johnson, BBO # 667261